vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.134 OF 2002

Motiram s/o.Gangaram Jadhav
at present - Yerawada Central
Prison, Circle No.1, Yerawada Pune ... Appellant

V/s.

The State of Maharashtra ... Respondent

Ms.D.M. Shah for Appellant
Dr.F.R. Shaikh, APP, for Respondent

CORAM: **V.G. PALSHIKAR, Ag. C.J. & SMT.NISHITA MHATRE, J.**

DATED: **AUGUST 31, 2006**

ORAL JUDGMENT (PER SMT.MHATRE, J.):

. The judgment of the I Adhoc Additional Sessions Judge, Raigad-Alibag has been impugned in the present Appeal. The appellant has been convicted under section 302 of the Indian Penal Code and sentenced to suffer imprisonment for life.

2. In this case, the appellant has been accused of fratricide due to a property dispute. The deceased and his family stayed in a house which was owned by his mother. The appellant wanted this house for himself and therefore, asked the deceased to vacate the house. The deceased had informed the appellant that he would vacate the house after his new house was constructed. Irked by this, the appellant had assaulted the deceased on his head with a muller. The appellant threatened to kill the deceased if he did not vacate the house. On

21.12.2000, the appellant carried out his threat and stabbed the deceased with a knife in the chest. This knife blow was sufficient to kill the deceased. The appellant was apprehended by the members of his family who had witnessed this incident and a complaint was registered against him. He was then charged for having committed murder of his brother, the deceased.

3. At the trial before the Sessions Court, the prosecution has relied on the deposition of four witnesses. Two of these witnesses PW1 and PW3 are eye witnesses. PW2 is the Doctor who has proved the postmortem report and PW4 is the Investigating Officer.

4. PW1 is the wife of the deceased. She has stated that the appellant had threatened her husband with dire consequences if he did not vacate the house. On the night of 21.12.2000, the appellant had come to their house in a drunken stupor when the deceased told him to go home. She has mentioned the presence of PW3, the sister of the deceased and her mother in law when a quarrel ensued between the appellant and the deceased. The appellant inflicted a knife blow on the chest of the deceased. The deceased fell to the ground. The appellant ran to his own house taking the knife with him. The appellant had also slapped this witness. She has stated in her cross examination that she tied the accused with a rope with the help of one Kartinthan

Putlya Waghmare. The accused was then tied to a pillar to prevent him from escaping. She informed the police who came to the spot and arrested the appellant. The knife was recovered by the police. This testimony has been corroborated by PW3, the sister of the appellant and the deceased. She has deposed that the appellant assaulted the accused with a knife on the left side of his chest. Although she has admitted that the appellant and PW1 were not on cordial terms, this by itself would not prove that the appellant has been framed unnecessarily. The eye witness accounts of both PW1 and PW3 are believable and their testimony has not been shaken in the crossexamination.

5. The medical evidence on record is that of PW2, the Doctor who conducted the postmortem examination on the dead body. This examination was carried out on 22.12.2000. The witness has opined that the injuries caused to the deceased were caused by sharp instrument like a knife. The postmortem report indicates that the deceased had suffered the stab injury on the left side of his chest which is a vital part of the body. The death has occurred on account of haemorrhagic shock due to this stab injury on the chest. In such circumstances, when the ocular evidence is supported by the medical evidence on record, it is difficult to accept that the appellant is not guilty as charged.

6. The recovery of the knife from the house of the appellant is also a factor which much be borne in mind when considering whether the prosecution has been able to establish its case. This knife bears human blood stains as seen from the report of the Chemical Analyser. There is no doubt therefore, that the deceased died a homicidal death. It has also been established that the appellant committed an offence of culpable homicide. It is however necessary to determine whether this offence amounts to murder and is punishable under section 302 of the Indian Penal Code. Undoubtedly, the injury sustained by the deceased was a stab injury on his chest. This single blow has fatally wounded the deceased. However, there is no evidence on record to indicate that the appellant had any intention to cause the death of the deceased.

7. The Apex Court in *State of M.P. v/s. Kalu Ram,* **(2004) 12 SCC 543,** *Shivappa Buddappa Kolkar v/s. State of Karnataka,* **(2005) SCC (Cri) 93** and *Ravi Kumar v/s. State of Punjab*, **(2005) 9 SCC 315** has considered whether an injury inflicted by a single blow on the deceased, on the spur of the moment, can constitute an offence under section 302. The Apex Court has held that when such an injury is inflicted if the accused had no intention to cause death the offence would be punishable under section 304 Part II. In the present case it is obvious that the appellant had no intention to kill his

brother and hence, the conviction under section 302 of the Indian Penal Code cannot be sustained.

8. The impugned judgment convicting the appellant under section 302 of the Indian Penal Code is set aside. However, the appellant is convicted under section 304 Part II. He is sentenced to suffer imprisonment for a period of six years. Appeal partly allowed accordingly.